HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22613 of 2006

Between:

Boya Thayamma, W/o Boya Thikkaiah,
Aged about 35 years, Occ: House wife,
r/o.Victoriapeta, Meddarigeri, Adoni Town,
Kurnool District … Petitioner

AND

Government of Andhra Pradesh, rep. by
its Secretary, General Administration
Department (Law & Order), Hyderabad
and others. … Respondents

:: O R D E R ::

Counsel for the petitioner : Sri Voosa Raghu

Counsel for respondents : Government Pleader
for Home.

29th November, 2006

Per G.S.Singhvi, C.J.

This is a petition for quashing order dated 11-2-2006 passed by Collector and District Magistrate, Nalgonda (respondent No.2) under Section 3(2) read with Section 3(1) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders,

Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act').

The petitioner's husband is said to be an agricultural labourer. He was involved in two cases bearing PCR.No.73/ 2005-06, dated 20-5-2005 and PCR.No.155/2005-06, dated 21-7-2005 registered on the allegation that he was dealing in illicit liquor. In the first case, he is said to have been arrested while transporting 100 litres of illicit liquor contained in 50 polythene packets of 2 litres each. In the second case, a raid was conducted at a house in Telugu Nagar of Nallabanda Gudem Village of Kodad Mandal, where 117 polythene packets containing 2 litres of I.D. liquor were recovered in two gunny bags. Two persons found at the site namely Ganjai Seenu, S/o.Ramalingam, resident of Gopalpuram and Ganjai Ramulu, S/o.Komaraiah, resident of Nallabanda Gudem are said to have stated that the liquor belonged to the petitioner's husband and they were his employees. The Chemical Examiner, who analysed the samples of liquor, submitted a report with the finding that the liquor is injurious to health and unfit for human consumption. After taking into consideration the facts of the two cases registered against the petitioner's husband, respondent No.2 passed the impugned order. In his affidavit, respondent No.2 has justified and defended his action of passing the order of detention. Paragraph 5 of the counter affidavit filed by him reads as under:

> "It is submitted that in PCR.No.73/2005-06, dated 20-5-2005 referred to above, it was clear that the detenu was found in possession and transportation of 100 litres of I.D. liquor and the same was sent for chemical examination to the Chief Examiner, Regional Prohibition & Excise Laboratory, Warangal. In P.C.R.No.155/2005-06, the detenu stocked 234 litres of I.D. liquor at his house and was trying to sell the same through his henchmen. The Excise officials raided the premises and arrested the two henchmen of the detenu and seized the contraband. Subsequently, the detenu was also arrested on 28-9-2005. The sample drawn in both the above crimes were sent for chemical analysis and the Chemical Examiner opined that the sample is I.D. liquor containing

sediment which is injurious to health and unfit for human consumption. It is also pertinent to mention here that the detenu is frequently indulging in manufacturing, transportation and sale of I.D. liquor. He was also involved in PCR.No.166/200-2001, dt.6-9-2000 u/S.7(A) r/w 8(3) of A.P. Prohibition Act, 1995 of Proh. & Excise Station, Kodad, wherein he was manufacturing I.D. liquor near Cheruvu Alugu, outskirts of Thammarabandapalem village on 6-9-2000. The Excise officials have taken him into custody and seized 20 litres of fermented Jaggery wash and 10 litres of I.D. liquor in a plastic can. The case is pending trial vide C.C.No.67/2003. Thus, the activities of the detenu clearly fall within the definition of "Bootlegger" as defined u/S.2(b) of Act 1 of 1986, require passing of the order of detention. Upon perusing the material placed before me, I am satisfied that the detenu shall be prevented from further indulging in similar offences and thereby the order of detention was passed on justified grounds."

We have heard learned counsel for the parties. Section 3 of the Act, which empowers the State Government or its delegates to pass an order of detention, reads as under:

"**3 Power to make orders detaining certain persons:-**

(1)The Government may, if satisfied with respect to any boot legger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:

Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not

exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

A reading of the plain language of Section 3 (1) makes it clear that the government can pass an order of detention only if it is satisfied that the activities of bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber is in any manner prejudicial to the maintenance of public order and it is necessary to prevent him from doing so. In **E. Sumathamma v. The State of Andhra Pradesh**[1], a Full Bench of this Court considered whether every violation of the Excise Act could justify an order of preventive detention. While answering the question in negative, the Full Bench observed:

> "As there is no danger to public health or life if a person stocks genuine liquor, it cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act."

In **Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool**[2], a Division Bench of this Court again considered the same issue. The facts of that case show that the detenu was found in possession of 200 litres of fermented jaggery wash and 10 litres of illicitly distilled liquor respectively in two cases. He was detained under Section 3 (1) of the Act. While quashing the order of detention, the Division Bench observed:

> "Everyone who answers the description of boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the

detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public order" (vide Section 3(1)). The words "acting in any manner prejudicial to the maintenance of public order" are defined by Section 2(a) as meaning "when a
boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". The explanation to clause (a) of Section 2 says:

> "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia,* if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".

It is therefore clear that a person who is a
boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot-legger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.

The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health, no order of detention can be issued under Section 3 of the Act."

The Division Bench concluded that unless the grounds of detention specifically advert to the fact that the percentage of fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act and that since that has not been done, they were constrained to hold that the fundamental right of the detenu under Article 22(5) of the Constitution of India was violated.

In **K. Chinnappa Reddy v. District Collector-cum-District Magistrate**[3] also, three incidents led to registration of three cases under the Excise Act against the detenu, which were made basis for passing the order of preventive detention. The Division Bench referred to the Full Bench judgment in **Sumathamma**'s case (supra) and held that the contrary view expressed by another Division Bench in W.P. No.2180 of 1994 dated 09-3-1994 was *per incuriam*. The relevant portions of that order of the Division Bench are extracted below:

> "In the present case, first respondent, the detaining authority, has not mentioned in the grounds of detention that the arrack seized from the petitioner, the sales of which are attributed to the petitioner, if consumed, would result in grave or widespread danger to life or public health. The reports of the Regional Excise Laboratory also do not show that the arrack contains any harmful substance. Dealing with a similar contention in W.P. No.16671 of 1994, dated 17-10-1994 (Boya China Subbarayudu's case (4 supra)), Their Lordships held:
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> > "Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under article 22 (5) of the Constitution is violated". "

In **N. Rami Reddy v. Government of Andhra Pradesh**[4], also

the detenu was involved in three cases of possession of 5 litres, 1½ litres and 1 litre of illicitly distilled liquor, which was found on chemical analysis to be illicitly distilled liquor unfit for human consumption, but was not
stated to be 'harmful'. While quashing the order of detention, the Division Bench observed:

> "The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued under Section 3 of the Act."

If the order impugned in the writ petition is examined in the light of the judicial interpretation of Section 3(1) of the Act, it is not possible to sustain the detention of the petitioner's husband. No doubt, respondent No.2 has made a reference to the cases registered against the petitioner's husband on the accusation that he is engaged in the trade of illicit liquor, but there is nothing on the record from which it can be inferred that the officer concerned felt satisfied that the activity of the petitioner's husband was, in any manner, prejudicial to the maintenance of public order. The gravity of the consequences ensuing from the detention of a person needs no emphasis. It deprives a detenu of the basic right to life and liberty. Therefore, strict compliance of the provisions, which empower any authority to pass an order of detention, has to be insisted upon and any lapse in this regard will result in invalidation of the order of detention.

For the reasons stated above, we hold that the detention of the petitioner's husband is legally unsustainable and the order impugned in the writ petition is liable to be quashed. Ordered accordingly.

The writ petition is allowed in the manner indicated above. The detenu, who is now lodged in Central Prison, Warangal, shall be set at liberty forthwith, if his presence is not required in connection with any other case.

G.S.SINGHVI, C.J.

29th November, 2006

C.V.NAGARJUNA REDDY, J.

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[1] 1994(1) ALT 396 (F.B.)

[2] 1995(1) ALT (Crl.) 58 (D.B.) (A.P.)

[3] 1995(1) ALT (Crl.) 454 (D.B.) (A.P.)

[4] 1997 (4) ALT 522